

FILE NO. S-C-L-14

FILE NO. P-C-3630

1. In its order released September 8, 1955, the Commission recites consideration of the comments of several of the telegraph carriers, including those of Western Union. Western Union's petition for rehearing presents no facts or matters which were not before the Commission when it issued the orders of which reconsideration is sought. Under familiar

principles of procedure, the petition should be denied for this reason alone.

2. Western Union's petition is based upon the assumption that communication between the continental United States and the Territory of Hawaii is international. Section 3(e) of the Communications Act defines "interstate communication" as including communication "from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, . . ." Since Hawaii is a Territory of the United States, the service in question is clearly interstate and not international, both in the common meaning of those words and in the language of the Communications Act.

3. American Telephone and Telegraph Company is the only common carrier prepared to undertake construction of a cable between the mainland and Hawaii. It has stated its willingness to rent spare circuits in the cable to any of the telegraph carriers on satisfactory terms and conditions. No valid reason is suggested why the only carrier willing to assume these obligations should be precluded from using its own cable for those types of interstate communication service which it furnishes in other portions of the United States.

4. Western Union's petition refers to "the Congressional policy expressed in the Communications Act that there be a separation of domestic and international telegraph operations." In fact, Western Union's position is based entirely upon the assumption that there is such a policy. It is respectfully submitted that no such policy is either expressed or implied in the Communications Act.

5. Western Union's argument appears to be based upon the provisions of Section 222, the Domestic Merger Act, enacted in 1943. This Section, by its terms, applies only to the merger or consolidation of domestic telegraph carriers and prescribes the conditions upon which such a merger can be effected. The legislative history of the enactment clearly shows that its purpose was to permit the merger of the nation's two domestic message telegraph carriers, Western Union and Postal Telegraph Company which was then in financial difficulties.

6. For the purposes of Section 222, the terms "international telegraph operations" and "domestic telegraph operations" are given special definitions. Telegraph operations between continental United States and points outside North America are specially defined as "international." Thus, telegraph communications between continental United States and its territories and possessions (other than Alaska), though interstate for all other purposes, are classed as "international" for the particular purposes of Section 222.

7. Section 222 has no application to the present situation. There is no merger or consolidation involved here, and American Telephone and Telegraph Company is not a merged carrier. Further, the American Company is not a "domestic telegraph carrier" to which Section 222 applies, since the major portion of its traffic and revenues is not "derived from domestic telegraph operations" within the definitions in that Section. Although Western Union relies on the artificial definition of "international telegraph operations" in Section 222, it ignores the special definition of "domestic telegraph carrier" in that Section, which clearly excludes the American Company.

8. Western Union bases its contentions on the divestment provision of Section 222. For the reasons set forth above, none of the provisions of Section 222 applies to the American Company. However, even if that Company were within the purview of that Section, the divestment provision of Section 222 would not support the restrictions on the use of the cable Western Union would have the Commission impose. It requires that a merged domestic carrier which has availed itself of the permissive provisions of Section 222 divest itself of its international operations. The history of the Domestic Merger Act makes it clear that this provision and the interim provision for a formula for the distribution of overseas traffic, to which Western Union does not refer, apply to the situation which would result from the merger of Postal and Western Union. Manifestly, they do not apply to applications for authorization of additional facilities which are governed by other provisions of the Act.

9. American Telephone and Telegraph Company, in reliance upon the Commission's orders, is taking the steps required to construct the Hawaiian cable on schedule and has made, and is continuing to make, substantial commitments for that purpose. It is requested that a disposition of the petition for rehearing be promptly made before further substantial expenditures are incurred.

10. In conclusion, it should be emphasized that the American Company's use of the Hawaiian cable for interstate telegraph service would not be an entry into the international telegraph field, as Western Union seems to fear. No policy or other reason has been shown for treating Hawaii, for which statehood is proposed, differently from other parts of the United States. The restrictions upon the grant of authority for the construction of this cable sought by Western Union should not be imposed.

WHEREFORE, American Telephone and Telegraph Company submits that the petition of Western Union for reconsideration and modification of the Commission's orders of September 8, 1955 and September 19, 1955 should be denied.

October 7, 1955

Respectfully submitted,

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CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THERESA R. POGGIOLI certifies that on October 10, 1955, she served the attached "Opposition of American Telephone and Telegraph Company to Petition of Western Union for Rehearing" upon each of the parties listed below by mailing a true and exact copy thereof by regular United States mail, postage prepaid, to each such party at the address shown therefor:

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October 10, 1955

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